

exceed by 5% the call volumes terminated by the other provider. Ameritech Michigan asserts that this could result in a provider incurring significantly higher costs, but being unable to recover those costs because the call volumes remain within the 5% range that precludes compensation. Furthermore, Ameritech Michigan points out that the ALJ did not indicate how the 5% threshold would work in terms of billing. Specifically, Ameritech Michigan questions whether each carrier would bill for all of its traffic or only that portion over 5%, if the billing threshold is exceeded. Consequently, Ameritech Michigan maintains that, at a minimum, the Commission should reject the 5% factor and adopt a compensation mechanism that is usage sensitive and recognizes the respective costs incurred by carriers for the termination of local traffic. Ameritech Michigan concludes that mutual compensation should be based on current intrastate IXC access rates, which have already been approved by the Commission.

MECA agrees with Ameritech Michigan, adding that the Staff's proposal simply takes Ameritech Michigan's access rates and discounts them. In MECA's view, it makes no sense to change rates that are currently just and reasonable simply to give an advantage to new competitors.

In response, MCI argues that Ameritech Michigan offers no evidence to support its argument that all interconnecting carriers should be classified as its access customers. MCI asserts that Ameritech Michigan could have produced evidence of its costs associated with traffic termination for competing LECs, but it chose not to address that issue in its testimony or to file any cost studies in support of its access charge proposal. Furthermore, MCI continues, Ameritech Michigan's assertion that switched access rates take into account the appropriate usage of the company's terminating facilities and the duration of a call is

completely unsupported by any empirical evidence of record. MCI submits that all parties had fair notice of, and ample opportunity to contest, the Staff's proposals, and Ameritech Michigan's failure to do so indicates that it has no factual basis for its exception.

Furthermore, MCI continues, requiring each carrier to charge its own costs associated with termination, as advocated by Ameritech Michigan and MECA, is inappropriate for new entrants into the market. MCI says that forcing new entrants, which will likely have lower network expenses and cost structures than the LECs, to charge their own costs for terminating traffic would provide a windfall to incumbent LECs.

City Signal responds that MECA wants to require City Signal to pay long distance access charges for termination of local calls, while its own member companies maintain a bill-and-keep arrangement for the same type of calls. City Signal urges the Commission to ignore MECA's predilection for one-sided arrangements that require payments from new entrants while exempting its own members.

Teleport also excepts to the \$.05 per call rate, but for different reasons. Teleport argues that this rate is simply too high to facilitate economically viable local exchange competition. Teleport explains that the retail rates for business and residential calling are \$.082 and \$.062 per message, respectively. If City Signal has to pay Ameritech Michigan \$.05 to terminate a call, Teleport asserts, City Signal's margin to cover the originating side of the call and other common overhead costs is only \$.032 and \$.012, respectively. Teleport reiterates that the Commission should set the rate no higher than \$.041 per message for business calling and no higher than \$.031 for residential calling.

On the other hand, City Signal and MCI argue that the ALJ erred in not recommending the adoption of City Signal's bill-and-keep proposal. In doing so, they argue, the ALJ

abandoned his key determination that interconnection between City Signal and Ameritech Michigan should be on the same terms and conditions as interconnection between Ameritech Michigan and other LECs, which is a bill-and-keep arrangement. MCI contends that if the Commission adopts the ALJ's recommendation, City Signal will be relegated to the status of a second class carrier because, unlike other LECs, it would have to pay an explicit rate for termination of its calls.

AT&T requests a clarification regarding the ALJ's recommendation. AT&T points out that, for local calls within plus or minus 5%, there is still an obligation to book all costs incurred and all revenues due from the termination of that traffic. According to AT&T, each company must maintain a complete financial accounting of relevant costs and revenues so that it can comply with various Commission rules and statutory requirements.

In response to AT&T's clarification, the Staff states that both LECs should be required to track all costs and revenues due from the termination of local calls in order to determine whether the calling is, indeed, within plus or minus 5%. However, as to the accounting, the Staff believes that the companies should follow generally accepted accounting principles.

The Commission finds that the ALJ properly analyzed this issue and that his recommendation is fully supported by the record. In particular, the Commission is convinced that mutual compensation arrangements are critical for the further development of local exchange competition. As Dr. August H. Ankum, a manager in Teleport's Regulatory and External Affairs Division, testified, without mutual compensation, Ameritech Michigan will continue to operate as if competing carriers are mere customers instead of licensed LECs. (7 Tr. 989.) Dr. Ankum explained why a reasonably priced compensation mechanism is so important to competitors.

"At this early stage of competitive entry, local exchange competitors will capture an insignificant number of subscriber lines. Even if competitors succeeded in capturing 1% of the subscriber lines in a particular serving area, the incumbent LECs will still retain the other 99% of the subscriber lines. The likelihood is great, therefore, that competitors would be required to terminate virtually all of the local calls made by their own customers on the incumbent's network. Conversely, the incumbent will only have to terminate a tiny percentage of calls made by its customers on the competitor's network. Clearly, any imbalance in the pricing of a compensation arrangement will be insignificant to the incumbent but could very well crush the local competitor whose local traffic requires paying the incumbent LEC to terminate calls on the incumbent's network." (7 Tr. 975-76.)

Furthermore, as is evident from its exceptions, Ameritech Michigan has abandoned its one-way compensation proposal. Consequently, it is unnecessary to address that proposal.

After a review of all of the arguments, the Commission finds that the Staff's proposal offers a reasonable middle ground for a transitional mutual compensation arrangement. Given the range of proposals and opinions on this issue, the ALJ properly determined that the Staff's proposal represents an intermediate step away from the existing bill-and-keep arrangements between LECs and toward the use of access charges. In contrast, Ameritech Michigan failed to produce any cost data or evidence contradicting the Staff's proposal.

Nevertheless, the Commission is persuaded that the \$.05 per call rate should be restated on a per-minute-of-use basis, because that approach recognizes different customer calling characteristics. Although the Staff supported a per call rate because it believed that Ameritech Michigan does not have the capability to measure the duration of local calls, Mr. Panfil testified on rebuttal that Ameritech Michigan does, in fact, have that capability. (9 Tr. 1508.) In its reply brief, Ameritech Michigan confirmed that it has the ability to measure local calls on a per-minute-of-use basis and that this process is the same one used today to measure and bill for access services. Furthermore, the Staff agreed that \$.015 per minute is equivalent to the \$.05 per call rate.

The Commission further finds that the 5% billing threshold, calculated on a per-minute basis, is reasonable because it should adequately account for any skewed traffic balances between Ameritech Michigan and City Signal, while reducing billing costs when traffic volumes are essentially balanced. In contrast, the Commission is not persuaded that a 50% threshold will permit cost recovery. In addition, the Commission clarifies that when traffic exceeds the 5% billing threshold, compensation for all calls should be paid, not just the amount that exceeds 5%.

As to AT&T's requested clarification, the Commission finds that, for local calls within the plus or minus 5% threshold, Ameritech Michigan and City Signal should follow generally accepted accounting principles for tracking costs and revenues associated with the termination of that traffic.

Finally, the Commission finds that City Signal's proposal to charge access rates that are identical to Ameritech Michigan's access rates during the transitional period is reasonable. As Mr. Clift explained, Ameritech Michigan's access rates can be considered the market rate for access services in the Grand Rapids District Exchange. Furthermore, as a non-dominant carrier, City Signal may file and use rates with the FCC subject to one-day's notice, and there is no requirement that those rates be based on any preset criteria. (5 Tr. 497.)

In making the foregoing determinations, the Commission specifically rejects the argument that it is giving an advantage to newly licensed competitors. To the contrary, the Commission's finding is an attempt to strike an appropriate balance between the competing interests in this case on a transitional basis. The Commission emphasizes that, like many of the other issues, the compensation arrangements will be examined further in a subsequent

generic proceeding. Consequently, Ameritech Michigan and other parties will have another opportunity to present evidence of traffic exchange costs in that proceeding.

Unbundling

As explained by AT&T witness Ronald E. Sarah, a manager in AT&T's State Governmental Affairs Department, unbundling is "the identification and disaggregation of physical bottleneck components of the local exchange network into a set of 'piece parts' which can be individually provided, costed, priced, and interconnected in such a way as to provision all service offerings, including those offered by the LEC." (8 Tr. 1307.) Staff witness Thomas L. Saghy, an Auditing Specialist in the Commission's Communications Division, explained that a local loop is "the connection between the local subscriber's network interface and the vertical side of the main distribution frame residing in the telephone company central office serving that subscriber. In layman's terms this would be the wire connected from the outside of a person's house to the serving central office." (11 Tr. 2155.)

Ameritech Michigan currently does not offer, and it does not propose to offer, unbundled loops as a service in its tariffs. Rather, the loop facility is only offered bundled with and as a part of other services such as basic local exchange service, Centrex services, or dedicated point-to-point private line services.

In its application, City Signal requested that the Commission require Ameritech Michigan to unbundle its local loops to permit City Signal to provide basic local exchange service to every customer within the geographic area of its license. City Signal represented that it needs to purchase only the unbundled loop, which it would then resell to its customers packaged with its own facilities or services in order to provide basic local exchange service in areas in which it does not have transmission facilities. In short, City Signal stated that the switching

and transport functions that are included in Ameritech Michigan's current services are not necessary, because City Signal will be providing those functions. It is City Signal's position that Ameritech Michigan's refusal to provide unbundled local loops in the absence of interLATA relief constitutes the bundling of unwanted services or products for sale or lease to another provider, contrary to Section 305(1)(m) of Act 179.

In support of its position, City Signal pointed out that even a well-financed competitor that ultimately intends to rely solely on its own network facilities to compete with an incumbent LEC would experience some delay in replicating the ubiquitous local exchange network that an LEC such as Ameritech Michigan already has in place. Under these circumstances, City Signal argued, the only way that a new entrant can hold itself out to provide service to all customers within a given exchange area is to rely on a combination of its own facilities and facilities acquired from the incumbent LEC. City Signal represented that a similar process occurred in the interexchange market, in which new entrants such as MCI and Sprint initially relied extensively on leased AT&T circuits and then gradually replaced those circuits with their own facilities as economics permitted.

City Signal further contended that requiring Ameritech Michigan to provide unbundled local loops is in the public interest. According to City Signal, the offering of unbundled loops will benefit all customers in the Grand Rapids District Exchange by ensuring that there will be a competitive alternative to Ameritech Michigan when City Signal commences its operations. In addition, City Signal submitted that properly structured unbundling can help to avoid wasteful duplication of those facilities that are most efficiently built once and used by all carriers, while at the same time ensuring that the LEC responsible for building and maintaining those facilities is fully compensated for the costs incurred in doing so.

City Signal also requested that the Commission set the price for unbundled loops at the price Ameritech Michigan charges itself. City Signal contended that the appropriate pricing methodology is total service long run incremental cost (TSLRIC). City Signal further argued that if Ameritech Michigan is allowed to charge City Signal rates for unbundled loops with a built-in contribution above economic cost, Ameritech Michigan will be able to underprice City Signal, despite the fact that City Signal will be able to provide the service at a lower cost.

City Signal used information it obtained from Ameritech Michigan in discovery to determine unbundled loop rates for the Grand Rapids District Exchange. Relying on Exhibit A-48, City Signal stated that the incremental cost of the loop portion of a business access line is \$7.58 per month, while the incremental cost of the loop portion of a residential access line is \$11.12 per month. City Signal therefore contended that those prices support an \$8 per month business loop rate and an \$11 residential loop rate. City Signal further stated that if the Commission prefers a single rate for all loops, both business and residential, Exhibit A-49 shows the statewide average cost for all business and residential loops is \$8.99 per month, which supports a \$9 per month loop rate.

City Signal's \$8 and \$11 rates were based on total company incremental loop costs, meaning combined intrastate and interstate costs. City Signal took the position that if Ameritech Michigan recovers any portion of those costs through federally-imposed end-user common line (EUCL) charges, any EUCL recovery should offset the \$8 and \$11 unbundled loop rates. City Signal argued that this is appropriate to ensure that Ameritech Michigan does not overrecover its costs.

The Staff supported City Signal's unbundling proposal. It argued that Sections 305(1)(g) and (m) require the provision of unbundled loops. Furthermore, the Staff asserted, Act 179

requires City Signal to provide residential and business service to all customers desiring that service in its licensed exchange area. The Staff agreed with City Signal that, in the short term, this cannot be accomplished unless unbundled loops are available.

The Staff also supported City Signal's proposed pricing for unbundled loops on a transitional basis. The Staff argued that the price must recover the cost of providing the unbundled loop. Thus, the price floor must equal the TSLRIC of the unbundled loop. In addition, the Staff submitted, the price must not exceed the rates Ameritech Michigan charges its own customers for use of these same components or services. The Staff concluded that the \$8 and \$11 rates meet both of those criteria and, therefore, those rates are reasonable on a transitional basis.

MCI, AT&T, Teleport, and the Attorney General supported City Signal's and the Staff's positions regarding unbundling on a transitional basis. However, MCI, AT&T, and Teleport presented extensive arguments in support of the further unbundling of Ameritech Michigan's network. Specifically, Donald A. Laub, a manager in MCI's State Regulatory and Governmental Affairs Department, testified that City Signal's unbundling proposal does not go far enough to enable a competing LEC to provide basic local exchange service to every person within the geographic area of its license. According to Mr. Laub, further unbundling of the loop into feeder and distribution portions of the loop is essential for the potential development of new technologies, such as personal communications services. He also stated that all signalling functions generated by the incumbent LEC must be made available on an unbundled basis. AT&T's witness, Mr. Sarah, agreed that the local loop must be unbundled into at least three basic network components--loop distribution, loop concentration, and loop feeder.

MCI, AT&T, Teleport, and the Attorney General also supported City Signal's proposed pricing for unbundled loops. MCI argued that, with application of proper TSLRIC, the provision of unbundled loops will not impose any cost burden on the consumers of the other functions, and the price will be free of any subsidy.

Ameritech Michigan opposed being required to offer unbundled loops. Instead, Ameritech Michigan proposed that competing alternative exchange providers use existing services as an alternative to building their own facilities or using other alternatives, e.g., cable television facilities and wireless connections. Ameritech Michigan pointed out that it offers a wide range of tariffed services that can be used for this purpose. According to Ameritech Michigan, these existing services provide the functionality that is requested by City Signal and the intervenors in this case, i.e., a connection from a customer's premise to the alternative exchange carrier's switch. In Ameritech Michigan's view, the most basic service available to an alternative exchange provider is a voice grade private line circuit. Ameritech Michigan witness Daniel J. Kocher, Director of Ameritech's Planning and Implementation, Open Market Strategy, testified that there are no technical or functional differences between a single local distribution channel of voice grade private line and the unbundled loops demanded by City Signal. Mr. Kocher stated that the facility used between the central office and the customer's premises would be the same whether it was associated with an unbundled loop, a local exchange service, or a private line. (10 Tr. 1872.)

Ameritech Michigan also described other existing tariffed services that could be used by an alternative exchange carrier such as City Signal to connect its customers to the City Signal switch. According to Ameritech Michigan, those services include dedicated services or private lines of varying capacities, which provide a point-to-point, non-switched connection from one

customer's premises to another customer's premises. In addition, Ameritech Michigan asserted that switched services may be used for the connection from a customer's premises to City Signal. For example, Ameritech Michigan stated that available options include resale of business lines or trunks under either the shared tenant services (STS) tariff, the Centrex tariff, or switched access services such as a line-side connection through Feature Group A (FGA). Based on the existence of all of these services, Ameritech Michigan argued, unbundled loops are simply not necessary.

In support of its position, Ameritech Michigan argued that the Commission does not have the authority to compel the company to offer unbundled loops. First, Ameritech Michigan argued that the clear intent of Section 305(1)(m) of Act 179 is to preclude a basic local exchange service provider from bundling two or more services or products, thereby forcing customers to buy an unwanted service or product. Supported by MECA and GTE,¹⁰ Ameritech Michigan contended that an example of a prohibited activity under this section would be an attempt to bundle basic local exchange service with toll service. However, these parties argued that this provision cannot be interpreted to allow for the unbundling of existing facilities and their leasing to competitors. Moreover, Ameritech Michigan submitted that Act 179 broadly defines telecommunications services as those "offered to customers for the transmission of two-way interactive communication and associated usage." [MCL 484.2101(t).] According to Ameritech Michigan, components of an existing network, which competitors might find useful for their own purposes, are not services as defined by Act 179. Additionally,

¹⁰Although GTE generally agreed with Ameritech Michigan's position, both of its witnesses testified on cross-examination that GTE does not necessarily oppose the offering of unbundled loops, but it is concerned about the pricing of those loops.

as indicated earlier, Ameritech Michigan asserted that it has not even sought to offer unbundled loops as a service and the Commission cannot force it to do so.

Ameritech Michigan went on to argue that the Commission has already recognized that Act 179 does not grant it the authority to mandate that Ameritech Michigan, or any other telecommunications provider, lease unbundled loops. Ameritech Michigan stated that, in the 1994 report to the Governor and the Legislature, the Commission recommended that the Legislature consider several amendments to Act 179 prior to the sunset of the law in 1996. According to Ameritech Michigan, the Commission recommended that Section 206(1), which relates to the Commission's authority to order changes in the terms and conditions under which a new telecommunications service is offered, be amended to grant the Commission specific authority to require unbundling. Ameritech Michigan inferred from the proposed amendment that if the Commission believed it already had authority to require unbundling, there obviously was no need to ask the Legislature to amend Section 206(1).

Ameritech Michigan next argued that interconnection is simply an arrangement that allows the hand-off of traffic between two networks. As a result, Ameritech Michigan submitted, the interconnection arrangements required by Section 303(2) of Act 179 are those interconnections necessary to allow a competitive local exchange provider to hand-off local traffic to and from the existing license holder's network. According to Ameritech Michigan, arrangements for the hand-off of traffic between Ameritech Michigan's and City Signal's networks can take a variety of forms, none of which require or include leases of unbundled loops or other elements of its network. To the contrary, Ameritech Michigan asserted, Section 310(6) of Act 179 establishes that the minimum requirement imposed on an access provider is the level of interconnection imposed by the FCC, which is collocation. Ameritech

Michigan therefore concluded that unbundled loops are not a form of interconnection or collocation and, in fact, they are not even a form of access because an unbundled loop by itself, without a connection to a switch, does not provide access to the local exchange network.

Ameritech Michigan also asserted that it would be contrary to public policy to require it to provide unbundled loops. The company contended that there has been no showing of estimates of demand or comparative costs of building facilities versus using existing services versus leasing unbundled loops. Ameritech Michigan argued that it is not the Commission's duty to ensure that a competitor succeed or make a profit on each and every component of its service. The company stated that no substantive evidence was presented to demonstrate why unbundled loops, priced at cost, are essential to competition.

Ameritech Michigan further argued that a Commission order compelling it to offer unbundled loops would constitute an unconstitutional taking or confiscation of its property in violation of both the Michigan and United States Constitutions. In its reply brief, Ameritech Michigan devoted 27 pages to discuss numerous cases that it maintained support its position. Relying on those cases, Ameritech Michigan asserted that it is sufficient to show that a party's right to use its property has been restricted to constitute a taking. In Ameritech Michigan's view, the forced lease of unbundled loops to competitors would be a taking both as a physical deprivation of Ameritech Michigan's property as well as a deprivation of the company's right to operate its network and business in accordance with its original governmental franchise. Moreover, Ameritech Michigan argued that a citizen cannot be compelled to use its own property to perform a service for the benefit of a third party. In Ameritech Michigan's view, whether it is characterized as a service or a lease, unbundling is a permanent physical interference depriving Ameritech Michigan of all use and control of leased loops, thereby

amounting to a physical occupation. Ameritech Michigan concluded that a reading of Act 179 to permit such a taking would render the statute unconstitutional.

Ameritech Michigan went on to argue that further support for concluding that ordering unbundled loops would constitute a per se taking of property can be found in the recent decision in Bell Atlantic Telephone Companies v Federal Communications Commission, 24 F3d 1441 (D.C. Cir. 1994). In that case, Ameritech Michigan asserted, the Court rejected the FCC's position that it possessed the power to compel unbundling through involuntary physical collocation.

Ameritech Michigan next argued that, absent express compensation procedures in a statute, a statute authorizing a taking of property must be held unconstitutional. Here, Ameritech Michigan argued, Act 179 is silent on the issue of compensation to be paid to those who are compelled to unbundled their services, probably because the Legislature never intended to empower the Commission to compel unbundling. Ameritech Michigan therefore concluded that, even if Act 179 could be interpreted to allow compelled unbundling, the statute itself must be found unconstitutional because it fails to provide any safeguards to the rights of the property owner to contest the taking of its property.

As to City Signal's proposed rates for unbundled loops, Ameritech Michigan argued that they are significantly less than prices for existing services. In Ameritech Michigan's view, the lease rates for the unbundled loops would not be compensatory to Ameritech Michigan and are an attempt to force the company to subsidize City Signal's entry into competition. In contrast, Ameritech Michigan argued, even if the Commission were authorized to effect a taking of its loops, the company would be entitled to receive the fair market value of the loops. Ameritech Michigan asserted that, at a minimum, it would be entitled to be

compensated for the contribution it would have received from its own use of the loop facility to provide basic local exchange service. Ameritech Michigan explained that when it uses a loop to provide basic local exchange service, it receives revenues and resulting contribution from not only the monthly rate for the service, but also, for example, from local and toll usage as well as from other services provided to its customers over the loop. If City Signal were to lease the unbundled loop, Ameritech Michigan concluded, Ameritech Michigan would lose the opportunity to generate those revenues and the resulting contribution.

Ameritech Michigan went on to criticize the Staff's support for the pricing of unbundled loops, claiming that it was inappropriate and unreasonable. The company argued that the Staff arbitrarily chose a ratio of costs between the loop and drop components of existing services. The Staff then applied that cost ratio to existing rates for basic local exchange service. However, Ameritech Michigan contended that current basic local exchange rates incorporate residual pricing and rate of return regulation and are not cost-based. Ameritech Michigan further stated that the Staff's analysis inappropriately created a fluctuating unbundled loop rate, based upon application of the federal EUCL charge. The company also argued that the loop rates are based on average cost structures so that the actual loop facility may be more or less costly than the average. In Ameritech Michigan's view, City Signal will choose to build its own facilities where it is less expensive to do so and will use Ameritech Michigan's facilities only where the average cost is less than the actual cost of the loop. Ameritech Michigan concluded that this will result in its subsidizing City Signal's entry into competition.

Many of these same arguments were made by MECA and GTE. In addition, MECA stated that City Signal's request for unbundled loops priced at TSLRIC is designed to avoid

investment in Michigan's telecommunications infrastructure for the sake of corporate profit.

The ALJ found that the Commission has the power to require Ameritech Michigan to provide City Signal with unbundled loops. He was persuaded that Sections 305(1)(g) and (m) of Act 179 require the unbundling that City Signal requests in this case. In contrast, the ALJ found that the position advanced by Ameritech Michigan is far too narrow and would negate the purpose of Act 179 to promote competition. In the ALJ's view, limiting the application of Act 179 as urged by Ameritech Michigan and others would allow a provider to avoid unbundling by simply never offering a service in the first place, a result not intended by the Legislature.

The ALJ further found that Ameritech Michigan's existing services are not adequate to meet the needs of City Signal to allow it to compete in the basic local exchange service market. He was persuaded that the evidence showed that the proposed alternatives would not permit City Signal to provide an economically competitive alternative to Ameritech Michigan's existing service, again contrary to the intent of Act 179. Furthermore, the ALJ was not persuaded, as urged by MECA, that City Signal's request is grounded in its reluctance to invest in the basic local exchange network. Rather, the ALJ agreed with the Staff that this position was necessarily rejected by the Commission when it granted City Signal a license to serve the area.

The ALJ further determined that City Signal's proposed rates of \$8 per month for business loops and \$11 per month for residential loops are reasonable as transitional rates. The ALJ recognized that a more extensive record could have been made with regard to this issue, but given the time constraints and the number of issues raised, the evidence presented was sufficient to support his determination on a transitional basis. Finally, the ALJ found that

Ameritech Michigan's criticisms of the Staff's analysis of the proposed rates were disingenuous, because it had the opportunity to present its own analysis, but declined to do so.

Ameritech Michigan, GTE, and MECA except to the ALJ's findings. Ameritech Michigan reiterates the arguments presented in its reply brief. Among other things, Ameritech Michigan repeats verbatim its arguments that the Commission lacks authority under Act 179 to compel Ameritech Michigan to offer unbundling and, if the Commission orders the company to do so, it would constitute a taking of Ameritech Michigan's property in violation of the United States and Michigan Constitutions. GTE simply states that the ALJ's determination is contrary to Act 179 and not supported by the record.

MECA also reiterates its arguments that the Commission has no authority to order unbundled loops. In doing so, MECA presents a number of arguments regarding the scope of the Commission's authority under Act 179. For example, MECA argues that the Legislature intended that the Commission work within the framework established in Act 179. That framework consists of a set of different regulations that apply to specified services currently offered by LECs, namely, basic local exchange service, access service, and toll service. MECA contends that there is no indication in Act 179 that the Legislature intended that the Commission dismantle the local network and force a provider to sell or lease parts of that network to other providers, in lieu of providing access service.

MECA also excepts to the ALJ's conclusion that City Signal's request for unbundled loops is not based on its reluctance to invest in the basic local exchange network. First, MECA argues that if City Signal is not reluctant to invest, there is no need for unbundling. Second, MECA states, if the Commission's granting of a license indicates that City Signal has the

resources to invest in its own loops, then there is no economic barrier for City Signal to do so. Third, MECA believes that it is obvious that City Signal proposed unbundled loops because the purpose of unbundled loops is to use them in lieu of investment. Fourth, MECA contends that, even if City Signal is not reluctant to invest, the appropriate regulatory scheme is one in which investment is encouraged and a competitor can make a profit based on its own investment and efficiency. Toward that end, MECA asserts, the shift to competition should not simply shift control of the existing network to other providers, but should be designed to encourage the building of additional facilities, thereby providing reliability and extra capacity which, in turn, will lead to lower prices and new services. In contrast, MECA concludes that the use of unbundled loops and low-cost pricing of those loops will permit competitors to make an economic "killing" in the local exchange market.

City Signal, MCI, AT&T, Teleport, and the Staff all filed replies to Ameritech Michigan's and MECA's exceptions. Like the exceptions, the replies generally reiterate arguments made on brief. Consequently, only those arguments that offer some new insight into this issue will be set forth.

City Signal responds that the Commission's authority to establish interconnection arrangements pursuant to Section 303(2) of Act 179 cannot be examined in a vacuum. Rather, City Signal submits, Section 303(2) must be examined in conjunction with the rest of Act 179, in particular, Section 305. City Signal points out that Section 305 contains a list of acts that a licensed basic local exchange service provider cannot legally do, many of which are directly relevant to interconnection. Thus, City Signal asserts, the Commission cannot set terms of interconnection that would allow Ameritech Michigan to do that which it is forbidden to do under Section 305, in particular, Section 305(1)(g) and (m).

As to Ameritech Michigan's and MECA's interpretation of Section 305(1)(m), City Signal responds that the prohibition in that subsection is a prohibition on bundling service to another provider. City Signal points out that Ameritech Michigan uses the example of bundling long distance service with basic local exchange service. However, City Signal asserts that those are end-user services, not interconnection services between providers. According to City Signal, limiting that subsection to bundling of end-user services ignores the clear wording of the statute.

Furthermore, City Signal contends, Ameritech Michigan continues to try to separate service components from physical components of a service. In Ameritech Michigan's view, City Signal submits, the unbundled loop is only a piece of physical plant unless it is combined with computerized switching services. However, City Signal asserts that the problem with this argument is that all of Ameritech Michigan's services involve a combination of physical plant and services. For example, if Ameritech Michigan leases a private line to City Signal, part of that private line service will be the physical, dedicated line. According to City Signal, there is no distinction between plant and services in determining whether the Commission can unbundle services under Act 179 and, furthermore, the distinction has no meaning in the constitutional sense.

Relying on In re Quality of Service Standards for Regulated Telecommunication Services, 204 Mich App 607 (1994), MCI and the Staff argue that the Commission has those powers and duties that are incidentally or reasonably necessary to administer Act 179. MCI submits that, even if an unbundled loop is characterized as equipment, the Commission would have the powers reasonably necessary to fulfill the intent of Act 179, i.e., to foster competition. Contrary to Ameritech Michigan's contention, City Signal states that there is nothing in

Act 179 that expressly defines the term "service" or limits it only to the final product sold to the customer. MCI argues that it is unreasonable to argue that the Commission has authority to regulate the service, but not the components or equipment that facilitate such service. MCI asserts that it is reasonably necessary for the Commission to conclude that its power to regulate basic local exchange services includes not only the service provided to the customer, but also the components or equipment that facilitate the provision of that service.

The Staff further maintains that the Legislature was aware of unbundling when it enacted Act 179. According to the Staff, the FCC and the federal courts have ordered and upheld the unbundling of a number of components of the network to permit the competitive provision of telecommunications services. In the Staff's view, even the court-ordered divestiture of AT&T constituted an unbundling of the telecommunications network, which required that access to bottleneck facilities be offered to competitors on nondiscriminatory prices, terms, and conditions. The Staff asserts that it cannot be argued that the prohibitions in Section 305 of Act 179 were written with some other understanding of bundling in mind.

The Staff further responds that it is simply not true that unbundling will not promote infrastructure development. The Staff points out that City Signal has made a huge investment in the Grand Rapids area, including construction of a fiber optic cable network with state-of-the-art switching equipment.

Finally, City Signal, MCI, and the Staff respond that unbundling does not constitute the confiscation or taking of Ameritech Michigan's property. At the outset, MCI states that there are cases that indicate that the Commission need not address Ameritech Michigan's constitutional arguments because those cases conclude that the Commission may not have authority to determine the constitutionality of Act 179. Relying on Universal Am-Can Limited

v Attorney General, 197 Mich App 34 (1992), MCI states that Michigan courts have uniformly held that administrative agencies do not have authority to determine the constitutionality of a statute that they administer. In any event, however, MCI asserts that Ameritech Michigan's analysis is faulty because, among other things, requiring the provision of unbundled loops would not constitute a taking of property and no party has suggested that Ameritech Michigan not be compensated for the provision of unbundled loops. City Signal adds that Ameritech Michigan cites dated cases that involve outright takings without reference to the history behind, or the provisions of, Act 179.

Ameritech Michigan, GTE, and MECA also except to the ALJ's determination that the Staff's proposed rates for unbundled loops are reasonable as transitional rates. Ameritech Michigan and MECA again reiterate their argument that pricing an unbundled service must take into consideration the appropriate level of contribution to the common costs of the firm in addition to the incremental cost of providing the service. In contrast, Ameritech Michigan states, the characterization of long-run incremental cost as an appropriate standard for establishing the price of services is simply incorrect because nothing in Act 179 supports such a pricing philosophy. To the contrary, Ameritech Michigan submits, long-run incremental cost, as referenced in Section 308(1) of Act 179, is simply a floor that a provider cannot go below in setting prices. According to Ameritech Michigan, the purpose of LECs determining long-run incremental cost is to demonstrate that services are not subsidized, not to establish appropriate pricing. MECA adds that pricing unbundled loops at less than fully embedded cost would be harmful to ratepayers in the long run.

In Ameritech Michigan's view, the only explicit ratesetting standard described in Act 179 is the requirement that basic local exchange rates be just and reasonable. [Section 304(4).]

Ameritech Michigan maintains that this requirement does not translate to rates set at long-run incremental cost because that would be discriminatory, resulting in rates that are not compensatory and denying Ameritech Michigan the ability to earn a fair return on its assets. Ameritech Michigan concludes that its profitability should not be affected by competition and, therefore, the proposed pricing should be rejected.

Ameritech Michigan again criticizes the Staff's analysis in support of City Signal's proposed pricing. The company maintains that, although the ALJ did not address this issue, the Staff's analysis inappropriately suggested a fluctuating unbundled loop rate based upon application of the federal EUCL charge. Ameritech Michigan submits that, on cross-examination, the Staff's witness did not know whether and how the EUCL charge would apply to unbundled loops and acknowledged that the issue was not within the jurisdiction of the Commission. Furthermore, Ameritech Michigan argues, it is inappropriate to base a loop rate on a basic local exchange rate that applies in addition to the EUCL charge and then to suggest that the loop rate should be reduced by that charge when purchased by a competitor. According to Ameritech Michigan, the Staff did not consider the EUCL charge in applying its ratio to rates and, therefore, the Staff's analysis does not make any sense. Ameritech Michigan concludes that, because it is appropriate and necessary to apply the EUCL charge to unbundled loops, it plans to do so when it voluntarily offers unbundled loops.

City Signal requests a clarification on this issue because the ALJ did not specifically address whether the prices include the EUCL charge. City Signal states that under the Staff's analysis, the \$8 and \$11 rates are total company cost rates that would include both intrastate and interstate costs. Thus, City Signal states, whether or not a EUCL charge applies to an unbundled loop, it would pay a total of \$8 and \$11 per loop because the costs on which those

rates are based already include the costs accounted for in assessing an EUCL charge. Because the ALJ adopted City Signal's pricing proposal and the Staff's analysis, City Signal assumes that the ALJ also adopted the Staff's position regarding the applicability of the EUCL charge.

In response, Ameritech Michigan states that City Signal is anxious to have these rates approved because it intends to charge the EUCL charge to its end users and, consequently, it will have a net cost of only \$2.73 (\$8 minus the business EUCL charge of \$5.27) compared to Ameritech Michigan's current business line rate of \$10.71. According to Ameritech Michigan, this would give City Signal either a level of margin unheard of in the local exchange business or room to price its services at a level that Ameritech Michigan cannot match.

In response to Ameritech Michigan, the Staff states that the proposed unbundled loop rates are not only compensatory because they include a return on investment, they also make a contribution to Ameritech Michigan's common overheads. The Staff also asserts that it was clear that the \$8 and \$11 rates included any EUCL charge that would be assessed. Consequently, in adopting the Staff's analysis, there was no need for the ALJ to make a specific reference to the EUCL charge.

The Staff further responds that nothing in Act 179 requires that prices be set to ensure the same level of profit for a provider after the implementation of competition that it had before competition. Nevertheless, the Staff states, Ameritech Michigan's revenues and profits have continued to grow as competition has developed. In fact, the Staff claims, if City Signal purchases Ameritech Michigan's unbundled loops, the latter company's profitability will be less affected because it will be reimbursed for the costs related to that investment rather than being left holding stranded investment due to City Signal's constructing its own duplicative

loops. In any event, the Staff states that it plans to address, in a generic proceeding, the specific level of contribution that would be appropriate in the long run.

After consideration of all of the arguments, the Commission finds that it has authority under Act 179 to require unbundling. Specifically, the Commission derives that authority from Sections 305(1)(g) and (m), which provide that a provider of basic local exchange service may not:

"(g) Refuse or delay access or be unreasonable in connecting another provider to the local exchange whose product or service requires novel or specialized access requirements.

(m) Bundle unwanted services or products for sale or lease to another provider."
[MCL 484.2305(1)(g) and (m).]

The Commission has already found that it has authority to require the unbundling of services. In its September 8, 1994 order in Case No. U-10620, the Commission also relied on Section 305(1)(m). There, the Commission determined that it would be unreasonable to read Act 179 as not giving the Commission authority to enforce that section's prohibition against bundling. The Commission, however, further found that the issue of what constitutes unbundling would be examined in a future proceeding. This case is the appropriate proceeding in which to address that issue.

In reaffirming its authority to require unbundling, the Commission rejects Ameritech Michigan's and MECA's interpretation of Section 305(1)(m), which is that the Commission has the authority only to prevent a provider from bundling one tariffed service with another tariffed service. The Commission is persuaded that had the Legislature intended that the prohibition on bundling apply only to tariffed services, it would have specifically stated that in Section 305(1)(m). It did not do so. Moreover, as City Signal correctly points out, Ameritech Michigan's and MECA's examples of bundling are not appropriate because they

relate to end-user services. In contrast, Section 305(1)(m) prohibits bundling services provided to another provider. Thus, the Commission finds that Ameritech Michigan's and MECA's interpretation of Section 305(1)(m) is incorrect.

Further evidence of the fact that the Commission is not precluded from requiring unbundling of basic local exchange service can be found in Section 202(f)(viii) of Act 179. That section, which lists the items that are to be included in the Commission's report to the Governor and Legislature, states that the Commission must include a method to determine the total long run incremental cost pricing "for each component of the local exchange network and access services." [MCL 484.2102(f)(viii).] Because the Commission has the authority to cost each component of the local exchange network, it follows that the Legislature intended the Commission to have the power to unbundle those components.

Ameritech Michigan's attempt to separate service components from the physical components of a service is not persuasive. Again, as City Signal so aptly points out, all of Ameritech Michigan's services involve some combination of physical plant and services. Thus, such a distinction does not, in any way, undermine the Commission's authority to require unbundling.

In advancing their argument that the Commission has no authority to require unbundling, Ameritech Michigan, GTE, and MECA also overlook the importance of Section 305(1)(g). Although MECA argues that this section supports the use of access service as an alternative to unbundled loops, that interpretation ignores the fact that unbundled loops are, indeed, a form of access. As a new entrant in the local exchange market, City Signal needs the special requirement of unbundled loops to hold itself out to provide service to every customer in its geographic area. Ameritech Michigan is prohibited from refusing that service.